

POLICE DEPARTMENT

August 17, 2007

MEMORANDUM FOR:

Police Commissioner

Re:

Police Officer Scot Bosselman Tax Registry No. 905346

Patrol Borough Brooklyn North, Anti-Crime Unit

Disciplinary Case Nos. 82163/06 & 82221/06

The above-named member of the Department appeared before me on June 26,

2007, charged with the following:

Disciplinary Case No. 82163/06

1. Said Police Officer Scot M. Bosselman, assigned to the 73 Precinct, while off duty, on or about August 23, 2006 at approximately 0200 hours, at a location known to this Department, in Kings County, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said officer did have a dispute with, and push, an individual know to this Department and said individual did sustain a bruise to her shoulder. (As amended)

P.G. 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT

Disciplinary Case No. 82221/06

1. Said Police Officer Scot Bosselman, assigned to the 73rd Precinct, while offduty, on or about January 26, 2006, at a location known to this Department, within the confines of Kings County, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Officer did drive his vehicle with an individual known to the Department on the hood of said vehicle.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Cynthia Halm, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty in <u>Disciplinary</u>

Case No. 82163/06 and a plea of Guilty in <u>Disciplinary Case No. 82221/06</u>. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 82163/06

The Respondent is found Guilty.

Disciplinary Case No. 82221/06

The Respondent, having pleaded Guilty, is found Guilty.

EVIDENCE

The Department's Case

The Department called Police Officer Carolann Liguori and Sergeant Christopher

Connolly as witnesses and placed in evidence the statement of

Police Officer Carolann Liguori

Liguori has been a member of the Department for 24 years and is currently assigned to the 61 Precinct. She was on duty on August 23, 2006, when, at approximately 0430 hours, she responded to a radio transmission of an assault in progress at that location, she learned that the Respondent, standing outside the house, was a member of the service, and that his girlfriend was inside.

Liguori observed that

Liguori recounted that according to when she came home that night, the Respondent was already home and he was intoxicated and argued with her because she wanted to sleep downstairs and he wanted her to sleep upstairs. She claimed that he was very angry and that he pushed her very hard into a wall, causing her face to hit the wall.

She also saw blood and a thumb-sized indentation on the wall, and believed that the injuries and damage she saw were consistent with being pushed into the wall.

had a

Liguori recalled that refused to allow photographs to be taken of her injuries or of the damage to the wall, and refused medical attention even though responding Emergency Medical Service (EMS) personnel told her that she might have a dislocated shoulder.

Liguori averred that who, who is about did not appear intoxicated. Ligouri stated that she was not close enough to the Respondent to ascertain whether he was intoxicated. She said that she did not observe any injuries to the Respondent.

On cross-examination, Liguori revealed that she saw her supervisor, Sergeant Frangella, speak to the Respondent. She said that she did not repeat claim that the Respondent had been intoxicated to Frangella because told Frangella this himself.

Liguori agreed that Frangella found the Respondent fit for duty that night. She also clarified that the thumb-sized hole in the wall was not a big crack, and she had no

idea if it was caused by a thumb or by a piece of furniture. She reiterated that she did not speak to the Respondent that night.

On re-direct examination, Liguori recalled that there was blood where she saw the thumb-sized damage, that the damage was also the size of a nose, and that the location of the damage was where claimed her nose and face had come into contact with the wall. Liguori was not close enough to the Respondent to see if he was intoxicated, and she did not prepare a fitness for duty report.

Liguori described the wall in question as a "sheet rocked white wall" with an impression with blood in it. She said that nose was "slightly bleeding" so there was some blood but it was not splattered.

Sergeant Christopher Connolly

Connolly has been a member of the Department for 11 years and is currently assigned to the Brooklyn South Investigations Unit where he investigates police misconduct. He said that on August 23, 2006, he responded to the 61 Precinct to investigate a domestic dispute between the Respondent and He interviewed the responding officers and Department's Exhibit (DX) 1A and 1B are the audio cassette tape and transcript, respectively, of the interviews.]

some food, and was preparing to sleep on the couch downstairs when the Respondent came downstairs and told her to go upstairs to bed, but she declined. Stated that the Respondent then went upstairs, came back down and threw away the food that she was going to eat. Annoyed, she went upstairs and confronted him as to why he had

discarded the food. He started "yelling and screaming" at her and an argument ensued.
They went back downstairs. The Respondent attempted to telephone one of
friends, andtried to grab the phone from him. He pushed her and "she said she
went flying approximately five to six feet into a wall. She said she hit the wall with her
face." Her lip was cut and her nose and shoulder were bruised.
did not indicate that she and the Respondent had struggled over the phone
Her interview statements were consistent with statements she made to officers who
responded to the scene.
Connolly did not have an opportunity to interview the Respondent on the night of
the incident. From his recollection, had a cut in her lip and some bruising to the
bridge of her nose.
did not appear at trial. The Department Advocate stated that the
Department had made attempts to subpoena her, left subpoenas at her door and that she
was contacted that morning (T-3).
was interviewed on August 23, 2006, regarding this incident. (The
audiotape of the interview was entered into evidence as DX 1A and a transcript was
entered in evidence as DX 1B.) In that interview, stated that her date of birth is
, and her address is

telephone call to 911 the previous night regarding the domestic incident after the Respondent.

She said that the Respondent was upstairs sleeping and she "made up" the couch, made something to eat, and lay on the couch. She stated that she was eating and reading.

When she heard the Respondent coming down the stairs, she turned off the light because she "just did not want to talk to him." She said that the Respondent saw her on the couch, went over and told her to "come upstairs." After she replied that she was "okay" where she was, the Respondent started "yelling, saying some things." He went back upstairs, came back down, and then went up again.

said that the Respondent came downstairs. She heard him walking around in the kitchen and he threw away all the food she had made. She stated that when she went upstairs and asked him why he threw the food away, he started yelling. She said that he went downstairs and tried to call her friend Mary, whom she had been out with. She stated that she pulled the phone away from the Respondent so that he could not call her, and then he pushed her. She said that her face and arm hit the wall. She did not know if he pushed her with closed hands but she "went flying."

She noted that the light was not on in the kitchen, but the bathroom light was on.

She estimated that she was approximately five or six feet from the wall when the

Respondent pushed her. stated that she suffered bruises on her nose and shoulder as a result of the push. She stated that she hit the wall with her face and noted that she might also have hit the table. She had a bruise on her left shoulder and a mark on her lip.

She stated that the mark on her lip was probably the result of her tooth hitting the wall. She denied suffering any other injuries.

what he was saying. She stated that he told her she was going to get arrested, then she heard him say "Steve," and then he hung up. She then called 911. She stated that she thought he was "out of [his] mind" and she wondered what she would be arrested for. She said that she did not know what he said to the 911 Operator other than "Steve." The Respondent made the call from the kitchen. She stated that he called 911 from the home phone and she called 911 from her cell phone. The Respondent called first.

She said that the injury to her hand was not caused by the Respondent¹. She stated that she hit the wall in the bathroom, and that "he kind of pushed [her]." She said that it had happened over the weekend but does not remember which day. She stated that the incident was "really nothing." When asked if the push was accidental or intentional, she said that she did not remember what it was about. She denied that her finger was broken and said that she taped it and thought it was just bruised. She added that the incident in which her finger was injured had nothing to do with that evening.²

She said that she did not remember which day the first incident occurred, only that it was "right before the weekend." She stated that her back was to the Respondent but she did not remember the incident in terms of what they were talking about or what was "going on."

¹ The transcript of the interview says the injury was not from "him," though a review of the tape indicates that she, in fact, said that the injury on her hand was not from "tonight." In addition, the context suggests that the Respondent did cause the injury.

² This injury is not part of the instant charge.

She stated that the push was not playful but it was not accidental either. She said that they were talking about something. She agreed that the Respondent intentionally pushed her, but said they were not arguing at that point. When she was asked why he had pushed her, she stated that she was trying to remember exactly what they were talking about but "for the life of [her]" she could not. She stated that she did not seek medical treatment as a result of that injury because she does not have medical insurance and the injury to her finger "wasn't bad."

She acknowledged that she was drinking at a bar. She said that she did not believe that the Respondent was intoxicated when he came downstairs because it looked like he had just "gotten up." She stated that she did not see the Respondent drinking, but she did see beer cans in the trashcan which were not there when she left. She said that she went to the bar by 8:00 p.m. and returned home around 2:00 a.m. She stated that her friend works at the bar and they were "hanging out" and talking and she had a couple of drinks, but she did not drink that much.

She said that because her intention that night was to stay out of the Respondent's way, she made sure she "stayed out." She stated that she knew that by 2:00 a.m. he would be in bed. She said that the Respondent had requested to take Thursday off so they could go away for the weekend. She stated that normally she sleeps upstairs. She said that she had woken him up the night before and he had gotten annoyed. She stated that she had been watching a movie and he had said he had to work. She did not want to wake him up that evening. She agreed that the catalyst for their argument was him throwing out her food and her confronting him about it. She asked why he had done such a thing and the Respondent "started yelling and screaming."

The Respondent's Case

The Respondent testified in his own behalf and placed in evidence a statement made by Sergeant Francesco Frangella.

The Respondent

The Respondent has been a member of the Department for almost 14 years and worked in the 73 Precinct for 13 years before being assigned to his current command, Patrol Borough Brooklyn North, Anti-Crime Unit, where he is on modified assignment. He said that he and live together and she has been his girlfriend for about two and a half years.

The Respondent admitted that on January 26, 2006, he operated his vehicle with on top of the hood. He explained that on that date, was in the process of vacating her apartment and moving into his house with him. The Respondent was painting his house, and in an effort to unclutter the space, he decided to move some of her property back to her apartment.

The Respondent said that he knew was at a local tavern and met her outside to get her key so that he could unload the property. When told him that she did not want to go back to the apartment or put the property back into it, the Respondent said that he placed her property on the curb, believing that she would be forced to accept the property. Instead, she picked up her microwave and threw it through his car's back window, breaking it.

The Respondent said that he decided to leave, got in his car and pulled away from the curb when jumped on the hood of the car. He revealed that "she was bouncing

up and down on the hood and then she grabbed the wipers....I was trying to see, she was making faces at me through the windshield as she is holding onto the wipers." He said that the car was moving slowly and that when he pulled over, she slid off the hood of the car.

He said he went over to see if she was all right, and she said she was. EMS responded to the scene, but was not admitted to the hospital nor did he observe any injuries to her. In retrospect, the Respondent admits that he should have taken his keys and left the scene on foot when got onto his car. He said he was not charged with any offense for this incident.

On August 23, 2006, at approximately 0200 hours, he was home asleep upstairs when came home. He said that he went downstairs and saw her lying on the couch. He suggested that she go upstairs to sleep because there was no air conditioner downstairs and it was extremely hot. When told him to leave her alone, he decided to call her friend to find out why was so upset. He knew that had been at a bar with this friend before coming home. The Respondent believed that was acting "erratic," and that she might have been under the influence of alcohol, although he did not smell it on her.

When the Respondent picked up the phone to call series is friend, grabbed him from behind, pulled his arm back by his wrist, and, because his arm was at an awkward position, he went forward, breaking away from her grip and dropping the phone on the floor. He said that was pulling his arm back violently enough that had he not moved forward, she would have broken his arm.

When he broke from her hold, he could not tell what was happening to because he was bent over trying to reinstall the battery that had dislodged from the phone when it hit the floor. He used the phone to call 911 to report a dispute, as he is required to do. Then used her cell phone to call 911 as well. After he completed his call, the Respondent went outside to await the arrival of the police.

The Respondent denied shoving into the wall, striking her with his fist, open hand, legs, or anything else, or intentionally striking her in any way that night. As a result of his arrest that night, the Respondent said that he had been required to attend domestic counseling. He went to about a dozen sessions, and has not been directed to go back because he fulfilled the requirements of the Counseling Unit. He said that the counseling has been beneficial and he has had no further incidents with

On cross examination, the Respondent agreed that he was awakened by his residential alarm when came home, but he denied that this caused him to be annoyed. He denied that he was "yelling and screaming" at He explained that he threw 's food out because the bowl was on the counter top, he did not know she was still eating it, and it was customary for both of them to scrape food out of the dish and place it in the sink. He said that they did not argue about the bowl of food, although was "upset" that it had been thrown out.

The Respondent denied seeing fall to the floor or hit the wall after she attempted to grab the phone from him. Because he was bent down picking up the batteries and the phone, he was facing the opposite direction and she was behind him.

He said he was calling 911 because he did not want to have an altercation and because he is supposed to call 911 in the event of a verbal dispute. He said that he had

admitted that he had told that he was calling 911 to have her arrested, but he said that it was only a scare tactic. He denied that he had called 911 because he knew she was going to call 911 and that he wanted to be the complainant with respect to the incident.

The Respondent agreed that when he called 911, he did not mention that was hurt. He did not mention that had hit a wall because he did not see it happen. He said that he did not look to see what had happened to because after he called 911, he went outside to wait for the police to arrive.

The Respondent said that he was not angry that had tried to grab the phone from him, but that he was upset and in fear. He said that he was unaware of what had transpired while she was out earlier that night, but that she was a little irate. He said that he did not turn around and ask her what her problem was because he had previously inquired about that. He said that he did not get upset when she attempted to rip the phone out of his hand.

With respect to the first incident, the Respondent admitted that he and had argued about her possessions, that he had left a bag of her clothes and the microwave at the curb, that she was annoyed, and that he became annoyed when she threw the microwave through his car window.

The Respondent agreed that he was upset when he started to operate the car, but he denied knowing that she was on the hood until she leapt on it. He said that he saw her hanging on the wipers as he drove, but denied that he accelerated, saying that he was going at a "slow pace." He admitted that he turned a corner with on the hood, but denied that his tires were screeching as he turned that corner.

The Respondent said that when slid off the hood, he did not see any injuries, and denied hearing her scream in pain. He denied knowing that she was in pain. He said he did not know if she was okay. He let the EMS personnel tend to her. He admitted that it was against his better judgment to drive with on his hood.

The Respondent stated that the first incident occurred outside a bar in Brooklyn on the corner of and He acknowledged that as he was pulling away, got on the hood of the car. He estimated that he drove about half a block before he stopped and she slid off the hood of the car. He stated that as he drove, she jumped on, there was a slight turn, he continued driving, made another turn, and she came off, for a total of two turns. He said that on the first turn, he turned from onto He stated that the jumped on his car on the corner of and

He admitted that he went a full block, "an avenue block." He said that after he made a right turn onto Nostrand, slid off the hood. He stated that she was kicking the headlights as she was lying flat on the hood. He said that see "kind of" on the hood because of her small stature.

With respect to the second incident, the Respondent stated that he did not see what looked like when the police responded because he was outside. He added that they were separated because "it [was] domestic violence." He stated that the first time he heard had injuries to her nose, lip, and shoulder was at the precinct that night. He noted that he did not speak directly to her.

He estimated that the next time he saw was nearly a week later. He did not notice any residue of any injury at that time. He said that he can only assume that when

she pulled back, she fell backwards and that is the only way she could have suffered an injury. He acknowledged that such a scenario would have caused the back of her head to hit the wall as opposed to her nose. He admitted that he had no idea of how she got the nose injury.

Sergeant Francesco Frangella

Frangella was interviewed on August 23, 2006 in connection with this incident. A transcript of his statement was put in evidence (RX A). At that interview, Frangella stated that he is assigned to the 61 Precinct.

On August 23, 2005, he was assigned as the Patrol Supervisor. He heard radio transmissions that there was a 10-52, a dispute, and then a 10-34³ at the same location a minute later. He stated that he was notified by Central to "10-03⁴ her," and when he did so, he was told that the 10-34 was a female being assaulted by her boyfriend who was a police officer. When he responded to the scene, the Respondent, who was off-duty, was standing outside the house. He approached him and asked him what had happened. The Respondent told him he was having a dispute with his girlfriend. The Respondent appeared fit for duty and he denied smelling any alcohol on his breath.

He stated that the Respondent told him that there had been a previous incident with his girlfriend and that as a result he was "modified" at that time. He said that the Respondent was beginning to tell him what happened when his girlfriend came outside. Frangella stated that the girlfriend said, "He just beat me up. I want him locked up." He went inside to interview the girlfriend. She told him that while they were having a verbal

³ According to the Radio Code Signals Insert, a 10-34 designates an assault in progress.

⁴ According to the Radio Code Signals Insert, a 10-03 is a request to call the dispatcher by telephone.

dispute, he pushed her and her head or her nose and her lip struck the wall. He stated that he went back outside and spoke to the Respondent who told him they were involved in "just a verbal dispute."

Frangella stated that she had a red mark on her shoulder, but he did not see any other marks on her. He saw that the wall had a small hole in it. He agreed that the wall was sheetrock and said it was in the basement on the left-hand side. She stated that there had been a previous incident about a week before where they were involved in another dispute where he pushed her and somehow—she did not tell him exactly how—her finger was broken. She did not go to the hospital for treatment for the injury to her finger.

Frangella said that the Respondent did not state that there had been any physical confrontation between himself and his girlfriend. He stated that he did not smell any alcohol on her breath at the scene. He did not notice any open containers of alcohol when he entered the apartment.

FINDINGS AND ANALYSIS

Disciplinary Case No. 82221/06

The Respondent, having entered a plea of Guilty to this specification, is found Guilty.

Disciplinary Case No. 82163/06

The civilian complainant, did not testify. Sergeant Connolly's interview of was placed in evidence (DX 1A tape recording of interview; DX 1B transcript of tape).

It is well established that hearsay evidence is admissible in an administrative proceeding, and "may also constitute substantial evidence if it is sufficiently reliable and probative on the issues to be determined," *Ayala v. Ward*, 170 A.D.2d 235, 565 N.Y.S.2d 114 (1 st Dep't) *lv. to app. den.*, 78 N.Y.2d 851, 573 N.Y.S.2d 69 (1991), see also RCNY § 15-04 (e)(1). Indeed, hearsay may be the sole basis for an administrative finding of guilt.

In this case, however, the hearsay evidence does not stand alone. Police Officer Carolann Liguori, who responded to the scene of the incident, observed injuries to which were consistent with the hearsay statement. Ligouri also reported that made a statement to her that was consistent with the tape-recorded statement later made to Connolly (DX 1A and B). Furthermore, Liguori observed a thumb-sized indentation in the sheetrock wall, and blood on the wall, both of which were consistent with statement that the injury was caused by her being pushed into the wall. Connolly also observed injuries to some and lip. Finally, the testimony of Liguori and Connolly is wholly credible as they have no interest in the outcome of the case.

By contrast, the Respondent offers no credible explanation of how was injured nor does he claim that the injuries existed before he encountered her. Indeed, under the Respondent's version of events, fell backwards, which would not explain the injury to her face — specifically to her nose and lip, as well as the corresponding indentation in the wall.

In his closing argument, counsel for the Respondent asked the Court to consider an alleged lack of reliability on spart in assessing her credibility. Counsel notes

⁵ Ayala was a matter arising in this Department in which the only evidence of guilt was hearsay testimony, see OATH decisions, Index No. 401/88 (Aug. 11, 1989).

that in the January 6th incident (<u>Disciplinary Case No. 82221</u>), she threw a microwave through the rear window of the Respondent's car before jumping on the hood. In addition, prior to the present incident she spent many hours at a bar.

While these are factors to consider, they do not alter the basic, clearly-established facts of the case: that suffered injuries to suffered injuries to that she has consistently offered plausible explanation for her injuries which was supported by Liguori's observation of damage to the wall and blood in the vicinity of that damage; and that the Respondent's alternative account did not explain any of these results. Thus, taken together, there is substantial evidence that the Respondent pushed into the wall, causing the injuries to her nose, mouth and shoulder.

Counsel further notes that according to Liguori, claimed that during the August 23rd incident at the Respondent's home, the Respondent was intoxicated. The Respondent offered the statement of Frangella to establish that the Respondent was not found unfit for duty. However, an examination of statement indicates that she was not necessarily asserting that the Respondent was intoxicated, only that she noticed some empty beer cans around that she did not recall seeing earlier.

Counsel for the Respondent also argued that shearsay statement should be disregarded because the Department's failure to produce denied him the opportunity to cross-examine her. The Court rejects this argument. "In assessing whether due process requires the production of particular witnesses for cross-examination, a hearing officer should consider the nature of the evidence, the potential utility of trial confrontation in the fact-finding process, and the burden of producing the witness," *Gordon v. Brown*, 84 N.Y.2d 574 (1994).

Most significantly, no alternate theory of how injuries could have occurred was offered by the Respondent or even suggested at argument. Consequently, there is no reason to believe that cross-examination of would yield any further information helpful to the Respondent.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed on September 1, 1993. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department, in two instances. One involves an incident in which he drove with on the hood of his vehicle. The Respondent admitted that it was against his better judgment to drive with on his hood. It is

important to note, however, that it was herself who erratically jumped onto the Respondent's car after tossing a microwave through the rear window.

In the second incident, although stated that she drank moderately, by her own admission she had been in a bar for many hours prior to coming home at 2:00 a.m.

Further, the Respondent has attended the required domestic counseling and there have been no further incidents involving since August 23, 2006.

While this disciplinary case involves two incidents, considering all the factors, the 22 suspension days that the Respondent has already served would seem to reflect an appropriate penalty. Therefore, that is the recommendation of this Court.

Respectfully submitted,

Deputy Commissioner – Trials

MAR) 9 2008/ (WAR) 9 2008/ (WYMOND W. KELLY